

1 Honorable Marsha J. Pechman
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

9 COINLAB, INC., a Delaware Corporation

10 NO. 2:13-cv-777-MJP

11 Plaintiff,

12 v.
13 Mt. GOX KK, a Japanese corporation, and
14 Defendants.
15 Plaintiff CoinLab, Inc. ("CoinLab") moves the Court for an order extending the
16 July 22, 2014 temporary restraining order an additional fourteen days and lifting the
17 stay in this litigation to permit CoinLab to seek a default judgment against defendant
18 Tibanne KK ("Tibanne").

**MOTION TO EXTEND TEMPORARY
RESTRANDING ORDER AND TO LIFT
STAY TO PERMIT MOTION FOR
DEFAULT JUDGMENT**

Note for Motion: August 4, 2014

19 **I. BACKGROUND**
20 CoinLab filed this suit on May 2, 2013. The Complaint alleges that Japanese
21 corporation Tibanne and its subsidiary MtGox KK ("MtGox") breached a contract in
22 which they had agreed that CoinLab would serve as the exclusive U.S. provider of
23 exchange services for the digital currency Bitcoin on behalf of the defendants. Both
24 defendants were served in Japan and appeared through United States counsel. See
25 Dkt #9. Neither defendant challenged personal jurisdiction or venue in this Court. On
26 February 28, 2014, while discovery in this litigation was actively underway, MtGox filed
27 for bankruptcy protection in Japan. MtGox then filed a Chapter 15 proceeding in

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1000 Second Avenue, Suite 3670
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1 Bankruptcy Court in Dallas, Texas seeking formal United States recognition of the
2 Japanese Bankruptcy. On March 10, 2014, the Dallas Bankruptcy Court issued an
3 order finding that Section 362 of the Bankruptcy Code was applicable to MtGox on a
4 provisional basis. As a result, the claims against MtGox in this case became subject
5 to an automatic stay.

6 In conjunction with the bankruptcy, MtGox replaced its prior United States
7 counsel Baker & McKenzie (“Baker”) and Hillis Clark Martin & Peterson (“Hillis Clark”)
8 with Brown Rudnick and Fenwick & West. Baker and Hillis Clark filed a motion to
9 withdraw as counsel for Tibanne on March 20, 2014 but, for the time being, remained
10 counsel of record for MtGox. See Dkt # 39. On April 8, 2014, the Court granted Baker
11 and Hillis Clark’s motion to withdraw as counsel for Tibanne. Dkt # 57.

12 The same day Baker and Hillis Clark filed their motion to withdraw as counsel
13 for Tibanne, both firms also filed a motion on behalf of MtGox seeking to stay the
14 litigation against MtGox’s now unrepresented parent corporation, Tibanne. Dkt # 41.
15 On April 30, 2014, the Court granted the stay motion, staying the entire litigation. Dkt
16 # 62. On the same day, the Court issued a minute order *sua sponte* requiring Tibanne
17 to appear through new counsel by May 30, 2014. Dkt # 61. To date, Tibanne has not
18 complied with this order and the Japanese corporation remains unrepresented before
19 this Court.

20 **II. THE TEMPORARY RESTRAINING ORDER**

21 In early July, CoinLab learned through news reports and other sources that
22 Tibanne’s CEO and sole-shareholder Mark Karpeles was actively seeking to liquidate
23 the company’s assets. CoinLab then filed an emergency motion seeking to lift the stay
24 in order to obtain a temporary restraining order preventing Tibanne from carrying out
25 this liquidation. Dkt # 65. At the same time, CoinLab also moved for an order finding
26 Tibanne in default of its obligation to appear through counsel. Dkt #64. The motion for
27 a default order is still pending.

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1 On July 22, 2014, the Court granted CoinLab's TRO motion and issued an
2 order that, among other things, enjoins Tibanne from (1) disposing of or encumbering
3 any of its assets in the United States, other than in the ordinary course to meet
4 reasonable business expenses; (2) selling or destroying any websites or domain
5 names used in any Bitcoin exchange services provided by the defendants; (3)
6 creating, acquiring, or reactivating any subsidiaries without notifying CoinLab of the
7 purpose for the entity; and (4) destroying or altering any business records. In addition,
8 Tibanne is required to (1) provide CoinLab with an accounting for any assets disposed
9 of in the ordinary course; (2) provide CoinLab with a list of all websites operated or
10 controlled by Tibanne; and (3) maintain current accounting and business records. Dkt
11 #69.

12 **III. TIBANNE'S ONGOING FAILURE TO COMPLY WITH THIS COURT'S
13 ORDER**

14 Tibanne has still not appeared through new counsel in this case and has not
15 complied with the TRO's requirements about providing information to CoinLab.
16 Counsel for CoinLab provided a copy of the TRO motion to Tibanne CEO Mark
17 Karpeles, who responded by asking whether the litigation against Tibanne is stayed,
18 but has not had any additional contact with CoinLab. Townsend Decl. at Exhibit A.
19 Brown Rudnick, counsel for MtGox, has verified that it provided a copy of the Court's
20 TRO to Tibanne. *Id.* At Exhibit B. Nevertheless, there is no evidence that Tibanne
21 has made any effort to comply. Nor has it complied with the Court's Order that it
22 obtain new counsel to appear on its behalf in this litigation.

23 News reports indicate that Tibanne has now elected to proceed with the sale of
24 its domain names privately, rather than through the public auction which first alerted
25 CoinLab to the attempted liquidation. See Elliot Silver, "Bitcoins.com Auction
26 Postponed," July 23, 2014, at Domaininvesting.com/bitcoins-com-auction-postponed/
(last verified on August 2, 2104). In the article, the individual retained to conduct the

1 auction indicates that a private sale will go forward “once the legal issues are
2 resolved.” *Id.* It is not clear what “resolving” the legal issues means in this context.
3 Given Tibanne’s failure to appear and comply with the TRO, CoinLab has no
4 assurance that Tibanne will not simply ignore this Court’s injunction and attempt to
5 arrange a private sale of its most valuable assets while this case remains pending.

6 Tibanne’s refusal to acknowledge this Court’s TRO is consistent with these
7 defendants’ past efforts to skirt the authority of United States Courts. In addition to the
8 attempt to liquidate Tibanne while CoinLab’s claims are pending, MtGox and Mark
9 Karpeles have ignored orders from the Dallas Bankruptcy Court. MtGox’s Chapter 15
10 proceeding was filed by Mr. Karpeles on behalf of MtGox. When the Court ordered
11 Mr. Karpeles to appear for a deposition to defend the allegations he made in that filing,
12 he refused to comply. After the Court ordered the deposition to go forward a second
13 time and threatened to dismiss the Chapter 15, MtGox converted the Japanese
14 bankruptcy from a reorganization to a liquidation and replaced himself with a court-
15 appointed trustee. Mr. Karpeles has yet to appear for his deposition in that
16 proceeding.

17 **IV. THE TRO SHOULD BE EXTENDED AND THE STAY SHOULD BE
18 LIFTED**

19 Given Tibanne’s ongoing refusal to comply with this Court’s orders, the threat of
20 irreparable harm to CoinLab is at least as imminent as it was when the TRO was
21 initially granted. For the reasons set forth in CoinLab’s initial TRO motion as well as
22 the reasons identified above, CoinLab requests that the Court extend its TRO for an
23 additional fourteen days.

24 In addition, CoinLab requests that the Court lift the stay of CoinLab’s claims
25 against Tibanne so that CoinLab can move for a default judgment. Tibanne has been
26 given ample opportunity and notice to make a proper appearance here and comply
27 with this Court’s orders. It has refused to do so. There is an ongoing risk that Tibanne

1 is proceeding with its liquidation or otherwise disposing of assets. CoinLab must
2 reduce its claims to judgment so that it has the opportunity to attempt to recover some
3 value before that value has been entirely dissipated.

4 DATED this 4th day of August, 2014.

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CERTIFICATE OF SERVICE

6 I hereby certify that on August 4, 2014, I electronically filed the foregoing with
7 the Clerk of the Court using the CM/ECF system which will send notification of such
8 filing to all counsel of record. I also certify that the foregoing will be provided to the
9 following in the manner indicated:
10

11 Tibanne KK
12 Mark Karpeles
13 11-5, Shibuya 2-chome
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15 Tokyo, Japan
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24 [X] Via Email
25 [X] Via US Mail

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28 */s/ Jamie Telegin*
29 Jamie Telegin, Legal Assistant
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